

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0676-01  
Bill No.: HB 330  
Subject: Alcohol; Crimes and Punishment; Criminal Procedure; Public Records, Public Meetings  
Type: Original  
Date: March 10, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Federal	\$0	(\$22,000,000)	(\$44,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>(\$22,000,000)</b>	<b>(\$44,000,000)</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### **FISCAL ANALYSIS**

#### **ASSUMPTION**

Officials from the **Department of Public Safety – Missouri State Highway Patrol** and the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume the costs of the proposed legislation could be absorbed within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would require Department of Revenue to expunge first-offense, alcohol-related DWIs for persons who were under 21 who appeal to the court for expungement. Since the new requirements are only for the Department of Revenue, CTS would not anticipate any costs to the courts.

Officials from the **Office of Prosecution Services** assume the proposed legislation would have no fiscal impact on prosecutors.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume this legislation requires the Division of Motor Vehicles and Drivers Licensing to expunge all official records and recordations relating to any suspensions, revocations, or other administrative disciplinary actions take by the director of revenue as a result of or arising out of or related to the arrest, plea, trial, or conviction of any person for any offense for which the court has ordered expungement pursuant of subsection 1 of this section.

It allows the DOR to maintain such expunged records for the purpose of ensuring that the individual only receives one expungement, although the records of information contained therein shall only be released to the court where such person plead guilty or nolo contendere to or was found guilty of the offense which was ordered expunged.

This would mean that the administrative actions could only be released to the court where the department knew the outcome of the criminal charge and it was a guilty plea or nolo contendere or finding of guilty. It would impact the department's ability to comply with the federal commercial motor vehicle law and to evaluate eligibility for limited driving privileges.

In December 1999, the 106th Congress enacted, and the President signed into law, public law 106-159, the Motor Carrier Safety improvement Act of 1999. This act requires a state to comply with the requirements contained in the law in order to avoid federal withholding of federal highway funds.

Pursuant to the federal legislation, the state must maintain as part of its driver information system, a record of each violation of a state or motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, state licensing and law enforcement agencies, and their authorized agents.

Subdivision (19) specifically prohibits such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

This legislation would have an administrative impact on the DOR's Division of Motor Vehicle and Drivers Licensing. This legislation will require the DVSB upon court order to also expunge the administrative action that matches the conviction to be expunged. Currently the conviction is expunged by a manual process, and the administrative action would also be handled manually. This should have no impact on DVSB.

ASSUMPTION (continued)

This legislation will create significant unknown loss of federal highway funds due to non-compliance with the commercial driver license regulations promulgated by the U.S. Secretary of Transportation and subsequent loss of federal highway funds.

The proposal would directly affect Total State Revenue. As it is currently written, this legislation would create a substantial non-compliance issue with the Commercial Motor Vehicle Safety Act and final rules promulgated by the Federal Motor Carrier Safety Administration. Specifically, this legislation would create a form of masking which is specifically prohibited and thereby create a substantial non-compliance issue. If determined to be in substantial non-compliance, the state risks losing federal highway funding of 5% of the total apportioned funds for the first year of non-compliance and 10% for each subsequent year of non-compliance.

Officials from the **Department of Transportation (MoDOT)** assume the proposed legislation allows expungement of administrative DWI suspensions if the court has granted expungement of the conviction.

In December 1999, the 106th Congress enacted, and the President signed into law, PL 106-159, the Motor Carrier Safety Improvement Act of 1999. Section 202 of that Act amended Title 49 of the United States Code, Section 31311, relating to the commercial drivers license driving record requirements, a state must comply in order to avoid federal withholding of federal highway funds. Subdivisions (18) and (19) were added to this section.

Subdivision (18) – The State shall maintain, as part of its driver information system, a record of each violation of a state or motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, state licensing and law enforcement agencies, and their authorized agents.

Subdivision (19) – The State shall: (A) record in the driving record of an individual who has a commercial drivers' license issued by the state; and (B) make available to all authorized persons and governmental entities having access to such record, all information that State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a state or local law on traffic control (except parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

ASSUMPTION (continued)

This legislation does not: (1) authorize the state to maintain, pursuant to subdivision (18), a record of each state or motor vehicle traffic violation (such as speeding, improper passing, careless and imprudent driving) and then make available to the driver, the driver's employer of prospective employers or the secretary of the U.S. DOT these violations; and (2) comply with the provisions in subdivision (19) that prohibits traffic violations from being masked in any way from the record of an individual possessing a commercial driver's license.

Any violation of these two subdivisions would appear to put the state in non-compliance with federal law that according to 49 U.S.C. 31311(a), would subject Missouri to the penalties in 49 U.S.C. 31314. Section 31314 provides that for the first year that a state is in non-compliance with federal commercial motor vehicle masking requirements, the Secretary of U.S. DOT shall withhold 5 percent of funds apportioned to the state under sections 104(b)(1) (NHS funds), 104(b)(3) (STP funds), and 104(b)(5) (Interstate Maintenance), of Title 23 of the United States Code. For the second year and subsequent years of non-compliance, 10 percent of the above funds will be withheld.

Federal funds will be withheld on the first day of the fiscal year following the first year of non-compliance. If this proposal becomes law on August 28, 2003, the first federal distribution affected will be the federal year 2005, which begins October 1, 2004. The FY02 total for the NHS, IM and STP funds was \$436 million. Therefore the negative fiscal impact for FY05 would be \$22 million (\$436 X 5 percent) and the negative fiscal impact for FY06 would be \$44 million (\$436 X 10 percent).

FISCAL IMPACT - State Government

FY 2004  
(10 Mo.)

FY 2005

FY 2006

**FEDERAL FUNDS**

Loss – Department of Transportation

Federal funds withheld due to non-compliance

\$0    (\$22,000,000)    (\$44,000,000)

**ESTIMATED NET EFFECT ON  
FEDERAL FUNDS**

**\$0**    **(\$22,000,000)**    **(\$44,000,000)**

FISCAL IMPACT - Local Government

FY 2004  
(10 Mo.)

FY 2005

FY 2006

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

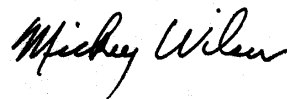
DESCRIPTION

The proposed legislation would require the Department of Revenue to expunge all official records related to suspensions, revocations, and other administrative disciplinary actions taken by the department as a part of any intoxication-related traffic offense when a court has ordered the expungement of the court's file relating to the same offense.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General  
Office of State Courts Administrator  
Department of Transportation  
Department of Revenue  
Department of Public Safety  
    – Missouri State Highway Patrol  
Office of Prosecution Services  
Office of State Public Defender



Mickey Wilson, CPA  
Director

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